IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Jaydutt v. The Addl.Divl.Commissioner, Jodhpur & Ors.

S.B.CIVIL WRIT PETITION NO.2621/1992
under Article 226 of the Constitution of India.

Date of Order : 5th January, 2006

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Miss Rekha Borana, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.
Mr. J.L.Purohit, for the respondent No.7.

BY THE COURT :

By this petition for writ a challenge is given to the judgment dated 5.12.1991 passed by learned Additional Divisional Commissioner, Jodhpur exercising powers under Section 300 of the Rajasthan Municipalities Act, 1959 (hereinafter referred to as “the Act of 1959”).

Briefly stated, facts of the case are that Municipal Board, Samdari exercising powers under the Rajasthan Municipalities (Disposal of Urban Land)

Rules, 1974 (hereinafter referred to as “the Rules of 1974”) sold a piece of land measuring 50'x4' to respondent No.7 Shri Murlidhar by treating it as a strip of land. The petitioner being aggrieved by the sale of land aforesaid preferred an appeal under Section 80(2) read with Section 283 of the Act of 1959 on the count that the land sold is not a strip being part of public way.

The Collector, Barmer by an order dated 13.1.1987 accepted the appeal and set aside the order dated 6.7.1985 confirming sale in favour of respondent No.7 Shri Murlidhar, on the count that the land in dispute was sold without adhering the procedure prescribed under the Rules of 1974. The Collector, Barmer remanded the matter to Sub Divisional Officer, Balotra, who then was working as Administrator, Municipal Board, Samdari also, to decide the application for sale of land afresh by giving an opportunity to the petitioner to raise objection. Respondent No.7 Shri Murlidhar being aggrieved by the order dated 13.1.1987 passed by the Collector, Barmer preferred a revision petition under Section 300 of the Act of 1959 which stood rejected by Additional Divisional Commissioner, Jodhpur vide the order dated 28.3.1989.

The Sub Divisional Officer, Balotra in pursuant to the order dated 13.1.1987 passed by the

Collector, Barmer decided the matter afresh and by judgment dated 12.4.1991 held that the land in question being not a strip was not available for sale under the Rules of 1974. The Sub Divisional Officer, Balotra while setting aside the order confirming sale of the land held that the same is part of public way and is used for public purposes.

Respondent No.7 Shri Murlidhar by way of filing a revision petition under Section 300 of the Act of 1959 gave challenge to the order dated 12.4.1991 passed by the Sub Divisional Officer, Balotra. The Additional Divisional Commissioner, Jodhpur by order dated 5.12.1991 though held that the land in dispute is not a strip of land and was also not available for sale being part of public way, accepted the revision petition on the count that the Sub Divisional Officer, Balotra was lacking jurisdiction to decide the application as the Municipal Board, Samdari by a notification dated 13.9.1990 was dissolved and in place of it Gram Panchayat was established. The Tehsildar, Siwana was appointed as its administrator, as such the application was required to be decided by Tehsildar, Siwana and not by Sub Divisional Officer, Balotra. The petitioner has given challenge to the order dated 5.12.1991 by instant petition for writ.

It is contended by learned counsel for the petitioner that order impugned dated 5.12.1991 is erroneous as the Sub Divisional Officer was adjudicating an order passed by the Municipal Board and that too under the directions given by Additional Divisional Commissioner, Jodhpur exercising powers under Section 300 of the Act of 1959, as such he acted well within his jurisdiction while passing the order dated 12.4.1991.

Per contra, it is contended by counsel for respondent No.7 that the Sub Divisional Officer, Balotra was having no authority to decide the issue in question after dissolution of the Municipal Board, Samdari and after constitution of Gram Panchayat, Samdari. It is asserted that on the date of decision the Sub Divisional Officer, Balotra was lacking jurisdiction to adjudicate any issue pertaining to Gram Panchayat, Samdari. Beside above, it is also stated by learned counsel for the respondent No.7 that the Sub Divisional Officer was not having any competence to set aside the order dated 23.8.1985 as the sale ordered to be made under that order was subsequently executed by registered sale deed. The registered sale deed could be set aside only by way of a civil suit and not under the provisions of the Act of 1959.

To substantiate the contention a reliance is placed by learned counsel for the petitioner on a judgment of this Court in the case of Likhmchand v. State of Rajasthan & Ors., reported in 1978 WLN (UC) 271. In the case of Likhmchand (supra) this Court held that after grant of permission to make the construction nothing remained to be done by the person to whom the permission was granted, therefore, the powers conferred by Section 285 of the Rajasthan Municipalities Act, 1959 could not be invoked to cancel the patta issued as a consequence of sale of land.

Heard counsel for the parties.

The sole contention of counsel for the petitioner is that the Additional Divisional Commissioner, Jodhpur though on merits held that the land in dispute was not open for sale being part of public way and being used for the public purposes erroneously held that the Sub Divisional Officer, Balotra was lacking jurisdiction to adjudicate the issue after dissolution of Municipal Board, Samdari and establishment of Gram Panchayat, Samdari. It is contended by learned counsel for the petitioner that the Sub Divisional Officer, Balotra was examining validity of the order dated 6.7.1985 which was passed under the Rules of 1974 framed under the Act of 1959.

It is further submitted that the Sub Divisional Officer, Balotra was examining validity of the confirmation for sale of land in pursuant to an order passed by the Additional Divisional Commissioner exercising powers under Section 300 of the Act of 1959, therefore, he was competent and well within his jurisdiction to do so.

I am in agreement with learned counsel for the petitioner. The Sub Divisional Officer, Balotra was adjudicating a matter remanded to him by Additional Divisional Commissioner, Jodhpur exercising powers under Section 300 of the Act of 1959, as such the powers are required to relate back to the date on which the original order was passed. On that day the Sub Divisional Officer being administrator of Municipal Board, Samdari was having jurisdiction to decide the issue and, therefore, he has not committed any error while passing the order dated 12.4.1991.

More emphasis is given by learned counsel for the respondent No.7 that the Sub Divisional Officer, Balotra erred while cancelling the order dated 6.7.1985 as the decision of the Municipal Board to sale the land was executed by a registered sale deed, therefore, no order could have been passed under the Act of 1959.

In the case of Likhmchand (supra), reliance upon which is placed by counsel for the petitioner, the Court was dealing with the powers under Section 285 of the Act of 1959. Section 285 of the Act of 1959 empowers an officer appointed or authorised by the State Government if in opinion of any such officer the execution of any order or resolution of a Board or doing of anything which is about to be done or is being done by or on behalf of a Board is causing or is likely to cause injury or annoys to the public or a breach of peace or is unlawful, he may by order in writing under his signature suspend the execution or prohibit the doing thereof.

In the present case the powers by the Sub Divisional Officer were not at all exercised under Section 285 of the Act of 1959. In the instant matter a challenge was given under Section 80(2) of the Act of 1959 to the correctness, legality or propriety of the sale or transfer of government land by Municipal Board, as such the law laid down by this Court in the case of Likhmchand (supra) is having no application in present controversy. The Sub Divisional Officer as well as the Additional Divisional Commissioner found that the land transferred is part of public way and its sale in favour of the respondent No.7 is hazardous to the traffic. I also perused the site map of the land in question, a perusal of which clearly shows that it is part of public way and is used for public

purposes. The width of the way where the land in question is situated is only 11 ft. in the eastern end and is 17 ft. at western end. The sale out of this small part of land shall certainly effect the pubic traffic adversely.

The Municipal Board was having no authority under the Rules of 1974 to sale the land which is part of public way, as such the sale made in favour of respondent No.7 is void. It does not create any right in favour of Shri Murlidhar. The confirmation of sale of the land in dispute being void, the registered sale deed too is void. For the sake of argument even if it is accepted that the land in question is not part of public way and is a strip, then too the physical conditions of the site clearly shows that transfer of land will effect thoroughfare of the traffic adversely.

In view of whatever discussed above I am is of considered opinion that transfer of land in favour of respondent No.7 by then existing Municipal Board, Samdari was not proper. The Additional Divisional Commissioner, Jodhpur also erred by order dated 5.12.1991 while holding that the Sub Divisional Officer, Balotra was having no jurisdiction to pass the order dated 12.4.1991 after establishment of Gram Panchayat, Samdari.

Accordingly, this petition for writ is allowed. The order impugned dated 5.12.1991, passed by Additional Divisional Commissioner, Jodhpur is quashed. The order dated 12.4.1991 passed by the Sub Divisional Officer, Balotra is restored.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.